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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,267	12/12/2001	Michael Wayne Brown	AUS920010821US1	1757
34533 7590 06/26/2008 INTERNATIONAL CORP (BLF) c/o BIGGERS & OHANIAN, LLP P.O. BOX 1469 AUSTIN, TX 78767-1469				
EXAMINER				
ELAHEE, MD S				
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2614				
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06/26/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/015,267

Applicant(s)

BROWN ET AL.

Examiner

MD S. ELAHEE

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-15, 17-26, 28-30, 40, 41, 43-46, 48-50 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6-15, 17-22, 40, 41, 43-46, 48, 49 and 52 is/are allowed.
- 6) ☒ Claim(s) 23-26, 28-30 and 50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of Reference Cited (PTO 152)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO 413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This action is responsive to an amendment filed on 06/06/2008. Claims 1-4, 6-15, 17-26, 28-30, 40, 41, 43-46, 48-50 and 52 are pending. Claims 5, 16, 27, 31-39, 42, 47 and 51 have been cancelled.

Response to Arguments

2. Applicant's arguments with respect to claims 06/06/2008 Remarks have been considered but are moot in view of the new ground(s) of rejection which is deemed appropriate to address all of needs at this time.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 23-26, 28-30 and 50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claims 23 and 50 recite computer program product comprising a recoding medium, wherein the recording medium is a recordable-type media. Claim language does not comply with the requirements of MPEP 2106.01.I. The “recoding medium” is only recited once in the invention disclosure (Preamble of Claims 23 and 50). Since “recoding medium” is not defined in the disclosure, it may encompass a variety of media ranging from a piece of paper to a carrier signal. Furthermore, “computer program” or “software” is merely a set of instructions. On the contrary, “memory”, “computer program” and “software” are well defined acceptable terminology in computer programming. Computer program is data structure. Data structures not claimed as embodied in computer-readable or machine-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer or machine. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1754 (claim to a data structure per se held nonstatutory). Claims 23 and 50 fail to include practical application that produces either (1) tangible, concrete and useful result or (2) physical transformation. Therefore, since the claimed recording medium does not comprise instructions to cause a processor to perform the detecting, identifying, controlling and enabling functions of the claim then the Applicant has not complied with 35 U.S.C 101. Since claims 24-26, 28-30 are dependent claims, these claims are also rejected under 35 U.S.C. 101.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 23-26, 28-30 and 50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter i.e., "means, recorded on said recording medium, for", which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Each "means for" has a corresponding structure. The original specification fails to explain as to how the "means for....." be recorded on said recording medium. One of ordinary skill in the art would not be able to establish the claimed "recorded" without undue experimentation.

7. Regarding claims 23-26, 28-30 and 50, the word "means" is preceded by the word(s) "recorded on said recording medium" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gallick (U.S. Patent No. 6,678,359) in view of Bartholomew et al. (U.S. Patent No. 6,167,119).

Regarding claim 50, Gallick discloses all of the claimed subject matter except for the "origin device" (feature server 160) to detect a voice utterance of a callee from a destination device, as claimed. Although Gallick teaches (1) capturing the callee's voice utterances, (2) analyzing these utterances to identify the person answering the call at the called facility, and (3)

transmitting a message identifying the answering party to the caller (Gallick, col. 3, 11. 44-53; col. 6, 11. 3-20, 47-56; Fig. 2b), it is unclear from Gallick whether the feature server performs this voice analysis.

Gallick, however, teaches that a speaker's phrases are captured and sent to (1) a local voice identification recognizer located on the local personal computer where the softphone resides or, (2) on a server on a network where the softphone resides (Gallick, col. 6, 11. 11-14). This teaching therefore would have suggested to ordinarily skilled artisans that voice analysis could be performed on, among other things, the feature server -- a server that is certainly "on a network where the softphone resides." See, e.g., Gallick, Fig. 1.

In any event, Bartholomew discloses a telephone network comprising an "intelligent peripheral" (IP) 23 that provides, among other things, speaker identification/verification via speech recognition and analysis functions (Bartholomew, col. 11, 1.63 - col. 12, 1. 40; col. 13, 11. 40-54; col. 14, 1. 9- 26; col. 20, 1. 41 - col. 21, 1.6; Fig. 1). As shown in Figure 3, the IP 23 in effect functions as a server and, when operating in conjunction with the central office service switching point (SSP), is an essential component in establishing a call to a desired party. *See* Bartholomew, col. 14, 11. 14-26. Therefore, the IP at least in part provides call origination, and thus reasonably constitutes an "origin device."

In view of Bartholomew, and further noting Gallick's teaching that voice analysis functions can be on a server on a network where the softphone reside, it would have been obvious to the skilled artisan at the time of the invention to provide such voice analysis functions at the feature server (origin device) of Gallick. Such a modification is tantamount to the

predictable use of prior art elements according to their established functions---an obvious improvement. *See KSR*, 127 S. Ct. at 1740. Moreover, performing such analysis functions at the feature server would provide additional network-based authentication capabilities of the softphones.

Gallick further teaches comparing the speech sample [i.e., voice utterance] with at least one voice sample on file [i.e., voice imprint] stored at the server (col.3, lines 44-49).

Gallick further teaches authenticating the identity of the answering called party according to an answering called party identification stored in association with a voice sample on file responsive to matching the voice utterance with the at least one voice sample on file (col.3, lines 44-53, col.6, lines 3-14, 27-59).

Reasons for Allowance

12. Claims 1-4, 6-15, 17-26, 28-30, 40, 41, 43-46, 48, 49 and 52 are allowed. Claims 23-26 and 28-30 will be allowed after overcoming the rejections under 35 U.S.C. 101.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims 1, 12, 23 and 52, the prior art Gallick after having all the limitation of parent claim fails to teach transmitting the voice utterance to a third party device via a network as well as receiving the callee identity from the third party device. Gallick teaches that voice of callee is identified by the voice identification recognizer located on server. Gallick reference

does not need any third party verification for identifying the voice of callee. Therefore, the addition of a third party verification would have required substantial structural to Gallick.

Regarding claims 40 and 45, the prior art Gallick in view of La Porta after having all the limitation of parent claim fails to teach accessing at least one voice imprint from a third party server. Gallick teaches that voice of callee is identified by the voice identification recognizer located on server. Gallick reference does not need any third party's access for identifying the voice of callee. Therefore, the addition of a third party's access would have required substantial structural to Gallick.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MD S. ELAHEE whose telephone number is (571)272-7536. The examiner can normally be reached on Mon to Fri from 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MD S ELAHEE/
MD SHAFIUL ALAM ELAHEE
Examiner, Art Unit 2614
June 27, 2008